APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,656	07/03/2003	Anthony Zalenski	1970-0005C	2953

59533   7590   09/08/2008
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EXAMINER
JAMAL, ALEXANDER

ART UNIT	PAPER NUMBER
2614	

MAIL DATE	DELIVERY MODE
09/08/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/613,656	ZALENSKI ET AL.
	Examiner	**Art Unit**	
	ALEXANDER JAMAL	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>21 February 2008</u>.
2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-43</u> is/are pending in the application.
   4a) Of the above claim(s) <u>24-43</u> is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) <u>1-23</u> is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a) ☐ All b) ☐ Some * c) ☐ None of:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. _____.
    3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1.   Based upon the submitted restriction election, the examiner notes that claims 1-23 have

been selected and claims 24-43 have been withdrawn from consideration.

2.   The examiner withdraws the previous office action and issues a new, non-final office

action maintaining the 101 rejection and also prior art assumption assuming the preamble of

the independent claims are changed to overcome the 101.

Claim Rejections - 35 USC § 101

1.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or
> any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and
> requirements of this title.

Claims 1-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed

to non-statutory subject matter. The claimed subject matter can be implemented and entirely

contained within a processor. There is no concrete or real world result, only manipulation of

abstract data.

For the purpose of examination, the examiner assumes the independent claims all read 'a

modem with a telecommunications protocol engine... ...' or 'a method of implementing a

telecommunications protocol engine inside a modem... ...'.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

3.   **Claims 1-24** rejected under 35 U.S.C. 103(a) as being unpatentable over Bullman et al.

(US 20040252703 A1).

         As per **claims 1,14,** Bullman discloses a modem comprising a protocol selection

function (para. 9). Bullman discloses that the system may be implemented on a processor

(which inherently comprises memory in order to function) (para. 47). The examiner

reads the microprocessor system as a 'virtual machine'. Bullman contemplates that

various types of memory could be used. The system (virtual machine) must inherently

store and read the various protocol in order to retrieve and process them during the

selection process. This would inherently comprise the CPU steps of claim 1. Further, the

system must inherently send 'state data' in order properly determine if the memory has

been correctly read or written to (the state data could be clocking or bus interface

information for example). However, Bullman does not specify specifically using FLASH

RAM with the processor.

         The examiner contends it would have been obvious to one skilled in the art at the

time of this application to use any well known processor/ram configurations (including

FLASH RAM) as a matter of design choice.

As per **claims 2,6,15,19,** Bullman discloses using DHCP or another protocol, but
does not specify the group of protocols consisting of (DHCP,H.323,STUN, and SIP).

Bull contemplates that other known types of protocols may be used (para. 48). It
would have been obvious to one skilled in the art at the time of this application to use any
well known protocols as a matter of design choice.

As per **claim 5,18,** after a first protocol is attempted, if it is not successful another
(second) protocol will be activated in the same manner as the first (claim 1 rejection).

As per **claims 11-13,** it would have been obvious to use a well known connection
means (such as a parallel or serial bus) in order for the processor and ram to
communicate.

4.   **Claims 3,4,7,8,16,17,20-23** rejected under 35 U.S.C. 103(a) as being unpatentable over
Bullman et al. (US 20040252703 A1) as applied to claims 1,5,14,18, and further in view of
Moon (US 20020161907 A1).

As per **claims 3,7,9,10,16,20,22,23,** Bullman discloses the system implemented
on a processor with memory, but does not go into the specifics of the implementation,
including interfacing with the various protocols using a finite state machine.

Moon discloses using a finite state machine implemented in a processor in order
to implement an adaptable, multi-protocol system (ABSTRACT). It would have been

obvious to one skilled in the art at the time of this application to use a well known

processor implementation as a matter of design choice.

As per **claims 4,8,17,21,** they are rejected as per claim 3 rejection. The system

inherently comprises I/O ports for the purpose of each component communicating to each

other.

Any inquiry concerning this communication or earlier communications from the examiner

should be directed to Alexander Jamal whose telephone number is 571-272-7498. The examiner

can normally be reached on M-F 9AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,

Curtis A Kuntz can be reached on 571-272-7499. The fax phone numbers for the organization

where this application or proceeding is assigned are **571-273-8300** for regular communications

and **571-273-8300** for After Final communications.

/Alexander Jamal/

Primary Examiner, Art Unit 2614

Examiner Alexander Jamal

September 6, 2008